

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0425P

Use Tax

For Calendar Years 1998, 1999, and 2000

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer was audited for calendar years 1998, 1999, and 2000. Upon audit it was discovered that the taxpayer failed to remit use tax on approximately seventy percent (70%) of its non-taxed taxable purchases.

Taxpayer requests abatement of the penalty due to human error.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that it manually reviews invoices for use tax liability. In conjunction with the conversion of its Accounts Payable systems to new software this year, Taxpayer is looking at automating this process so that all invoices that do not have sales tax on the invoice will automatically be selected for payment of use tax.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence

shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

Taxpayer was previously audited and failed to remit use tax due on clearly taxable items, primarily fixed assets, and has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer’s protest is denied.